Filed 4/26/10 P. v. Watkins CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CHAD HALL WATKINS, Defendant and Appellant.	E047917 (Super.Ct.No. RIF139455) OPINION

APPEAL from the Superior Court of Riverside County. J. Thompson Hanks, Judge. (Retired Judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Pamela Ratner Sobeck and James H. Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Chad Hall Watkins of three counts of aggravated sexual assault of a child (Pen. Code, § 269, subd. (a)(4);[1] counts 1-3), and 12 counts of lewd or lascivious acts upon a child (§ 288, subd. (b)(1); counts 4-15). Defendant contends there was insufficient evidence to support the element of force, fear, or duress, in all counts. We affirm.

I. BACKGROUND

Defendant molested the victim, his then stepdaughter, on a weekly basis from the time the victim was approximately seven years old, until she was 13 years old. Because defendant only challenges the sufficiency of evidence of one element, common to all of his convictions, we only recite the evidence relating to that element.

The victim testified that defendant would call for her to come to his bedroom when her mother was out of the house.[2] The victim knew what would happen when she was called; she was scared to go but was afraid to tell defendant, "No." She was scared to tell him to stop when he would close the door and start taking her clothes off, when he would start touching her, when he would lick her, and when he would get on top of her. Sometimes she was restrained by defendant, and sometimes she was not. Afterwards, defendant would say things "like, if you tell somebody, we could both get in trouble." The victim was afraid of getting into trouble if she told someone. She was afraid of what defendant might do if she told someone what he was doing. However,

---

[1] All further statutory references are to the Penal Code.

[2] Once or twice it happened in the victim's own room.

defendant never threatened to hurt her. The victim did not want defendant to touch her, lick her, or get on top of her. She did not want to touch him. She was afraid that if she tried to stop him that she would get in trouble.

During closing arguments, the People contended that all counts were accomplished with duress. Defendant argued in favor of lesser included offenses by noting the absence of threats and saying, "it's up to you as the jurors to decide whether or not [defendant] saying time after time 'Don't tell anybody or we'll both get in trouble' is that sufficient to rise to the level of duress."

II. CHALLENGED ELEMENT

Defendant contends there was insufficient evidence to support the element of force, fear, or duress, in all counts. The People contend the evidence is ample to support a finding of duress. We agree with the People.

" 'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] '[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citations.] '[I]t is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt.' [Citation.] 'In a case, such as the present one, based upon circumstantial evidence, we must decide whether

the circumstances reasonably justify the findings of the trier of fact, but our opinion that the circumstances also might reasonably be reconciled with a contrary finding would not warrant reversal of the judgment. [Citation.]' [Citation.]" (*People v. Lewis* (2009) 46 Cal.4th 1255, 1289-1290.) In examining the evidence, we focus on the evidence that did exist rather than on the evidence that did not. (See *People v. Story* (2009) 45 Cal.4th 1282, 1299.) The scope of the evidence includes both the evidence in the record as well as "reasonable inferences to be drawn therefrom." (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 89.)

The jury was properly instructed that duress means " 'a direct or implied threat of force, violence, danger, *hardship* or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to (1) perform an act which otherwise would not have been performed or, (2) acquiesce in an act to which one otherwise would not have submitted.' [Citation.]" (*People v. Leal* (2004) 33 Cal.4th 999, 1004.) "A threat to a child of adverse consequences, such as suggesting the child will be breaking up the family or marriage if she reports or fails to acquiesce in the molestation, may constitute a threat of retribution and may be sufficient to establish duress, particularly if the child is young and the defendant is her parent. We also note that such a threat also represents a defendant's attempt to isolate the victim and increase or maintain her vulnerability to his assaults." (*People v. Cochran* (2002) 103 Cal.App.4th 8, 15.)

" ' "The total circumstances, including the age of the victim, and [her] relationship to defendant are factors to be considered in appraising the existence of duress." [Citation.]' [Citations.] 'Other relevant factors include threats to harm the

victim, physically controlling the victim when the victim attempts to resist, and warnings to the victim that revealing the molestation would result in jeopardizing the family.' [Citations.]" (*People v. Veale* (2008) 160 Cal.App.4th 40, 46 [Fourth Dist., Div. Two].) " 'Where the defendant is a family member and the victim is young, . . . the position of dominance and authority of the defendant and his continuous exploitation of the victim' is relevant to the existence of duress. [Citation.]" (*People v. Senior* (1992) 3 Cal.App.4th 765, 775.) Notwithstanding victim testimony that no force or threats were involved, it has been held that sufficient evidence of duress existed where the victim was eight years old at the time of the offenses, because at that age " 'adults are commonly viewed as authority figures' " and " '[t]he disparity in physical size between an eight-year-old and an adult also contributes to a youngster's sense of his relative physical vulnerability.' " (*People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1579.) Furthermore, "when the victim is as young as [nine years old] and is molested by her father in the family home, in all but the rarest cases duress will be present." (*People v. Cochran, supra,* 103 Cal.App.4th at p. 16, fn. 6.)

The victim was afraid to go when she was called by defendant, her stepfather, afraid to tell him to stop, and afraid to resist him. After the molestations defendant would tell the victim, "if you tell somebody, we could both get in trouble." These comments, in addition to the size disparity and defendant's position of authority, were sufficient to constitute an implied threat of hardship that, given the victim's fear, coerced her acquiescence to each subsequent molestation. (See, generally, *People v. Veale, supra,* 160 Cal.App.4th at p. 47.) While these threats of "trouble" were directed

to disclosure, they served to isolate the victim and ensure she had no recourse but to acquiesce to being molested. (See *People v. Senior*, *supra*, 3 Cal.App.4th at p. 775 ["A simple warning to a child not to report a molestation reasonably implies the child should not otherwise protest or resist the sexual imposition"].) Thus, given the continuous exploitation of the victim, defendant's threats of "trouble" provide sufficient evidence upon which the jury could rely in finding duress.

Defendant relies upon *People v. Hecker* (1990) 219 Cal.App.3d 1238 and *People v. Espinoza* (2002) 95 Cal.App.4th 1287 as analogous authorities supporting his contention that the evidence is insufficient to support a finding of duress.

"In *Hecker*, the defendant was convicted under section 288, subdivision (b) of having anal and vaginal intercourse with his 12-year-old stepdaughter. As in the instant case, the defendant lived with the victim and molested her when he was alone with her at their home, in the defendant's bedroom. Also, the victim testified the defendant did not use physical force. [Citation.]" (*People v. Veale*, *supra*, 160 Cal.App.4th at p. 47.) "Despite these similarities, *Hecker* is distinguishable because the *Hecker* victim . . . testified she was not afraid of the defendant harming her, even though she may have been 'subconsciously afraid.' [Citation.]" (*Ibid*.) Furthermore, in this case defendant stated that both he and the victim could get into trouble, while in *Hecker*, the defendant did not threaten a hardship upon the victim. Instead, he indicated hardship only for himself, stating that disclosure " 'would ruin his marriage and his navy career [and] he would be put in jail for a long time.' " (*People v. Hecker*, *supra*, 219 Cal.App.3d at p. 1242.)

Espinoza is also distinguishable because the defendant in that case did not make any threatening statements. Here, defendant threatened "trouble" for both himself and the victim.

Defendant notes some testimony that indicates the victim received treatment from defendant that was preferential to that of her sisters. However, "[d]esire for reward and fear of punishment may coexist. A person, particularly a child, might act from dual motivations—to receive a reward *and* to avoid harm." (*People v. Wilkerson*, *supra*, 6 Cal.App.4th at p. 1580.) That is, it is immaterial whether the victim acquiesced in part because she received preferential treatment.

Accordingly, we hold that there was substantial evidence upon which the jury could find duress.

III. DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ
P. J.

We concur:

RICHLI
J.

KING
J.